

REMARKS

Claims 37-64, and 66-104 are pending in this Application. Claims 36-37, 47, 55, and 65 were rejected, Claims 38-46, and 48-54 were objected to, and Claims 56-64 were allowed. Claims 37-40, 43, 44, and 47 have been amended. Claims 36 and 65 have been cancelled without prejudice. Claims 66-104 have been added. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. §103

Claims 36-37 and 65 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,308,066 issued to Pekka Ranta et al. ("Ranta") in view of U.S. Patent 5,978,679 issued to Daniel H. Agre ("Agre"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

Claims 47 and 55 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ranta and Agre, and further in view of U.S. Patent 5,812,542 issued to Eugene J. Bruckert et al. ("Bruckert"). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must

be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

Applicant amended claims 37-40, each to be in independent form and include all the limitations of former independent claim 36. Dependent claims 66-68, and 75 correspond to former dependent claims 43, 45, 46, and 44, respectively and are now dependent on independent claim 38. Dependent claims 69-71, and 76 correspond to former dependent claims 43, 45, 46, and 44, respectively and are now dependent on independent claim 39. Dependent claims 72-74, and 77 correspond to former dependent claims 43, 45, 46, and 44, respectively and are now dependent on independent claim 40.

Applicant amended the apparatus claims in similar fashion. Thus, Claim 47 has been amended to include corresponding features of former method claims 36 and 37. New independent Claim 78 includes the limitations of former claim 47 and of former method claims 36 and 38. New independent Claim 87 includes the limitations of former claim 47 and of former method claims 36 and 39. New independent Claim 96 includes the limitations of former claim 47 and of former method claims 36 and 40. Dependent claims 79-86, 88-95, and 97-104 correspond to claims 48-55, respectively.

The Examiner stated in the above mentioned Office Action that the former claim 37 is unpatentable over the admitted prior art, *Ranta* in view of *Agre*. In particular, the Examiner stated that the limitation “*using knowledge about a frame structure of the data packets transmitted by the second base station in order to reduce a maximum effective total duration of the interruption phases*” is known from *Ranta* in col. 3, lines 13-27. Applicant respectfully disagrees. Contrary to the Examiner's argumentation, column 3, lines 13-27 from *Ranta* does not disclose “using the knowledge about a frame structure of the data packets

transmitted by the second base station in order to reduce a maximum effective total duration of the interruption phases". *Ranta* rather discloses that by using SID frames, which when the transmission of active speech is interrupted, these are transmitted at substantially lower rate than the frames for active speech. Thus, there is substantially more free time between the SID frames for performing measurements than between the active speech frames. If the Examiner considers the free time as the interruption phases, then these are not reduced by any means. Rather *Ranta* teaches the contrary, namely that these interruption phases are extended. Therefore, a combination of *Ranta* with any prior art would clearly teach away from the present invention.

Allowable Subject Matter

Claims 56-64 are allowed. Claims 38-46 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants amend Claims 38-40 to be in independent form as stated above.

Request for Continued Examination (RCE)

Applicants respectfully submit herewith a Request for Continued Examination (RCE) Transmittal. Applicants authorize the Commissioner to charge the amount of \$810.00 for the required filing fee to Deposit Account No. 50-2148 of Baker Botts L.L.P.

Petition Extension of Time

Applicants respectfully submit herewith a Petition for Extension of Time (Four Months). Applicants authorize the Commissioner to charge the amount of \$1640.00 for the required filing fee to Deposit Account No. 50-2148 of Baker Botts L.L.P.

Association of Customer Number and Change of Correspondence Address

Applicants respectfully request that all papers pertaining to the above-captioned patent application be associated with Customer No. **31625**, and direct all correspondence pertaining to this patent application to practitioners at Customer Number **31625**. All telephone calls should be directed to Andreas Grubert at 512.322.2545. A Revocation and Power of Attorney will follow shortly.


CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe there are no other fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2545.

Respectfully submitted,
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